IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.28903 of 2008
THE STATE OF BIHAR THRU. VIG.
Versus

DR.JAGDISH SINGH

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3 30.7.2008 Heard Sri Rakesh Kumar, I/C Special P.P. for Vigilance, State of Bihar, on the modification petition filed with a prayer to recall the order dated 10.3.2008 passed in Cr.Misc.No.4443/2008.

My attention has been drawn to the aforesaid order wherein the order dated 20.11.2007 passed in Special Case No.1/2004 by the Learned Special Judge, Vigilance, North Bihar, Muzaffarpur, in Vigilance P.S.Case No.4/2004 taking cognizance of the offences under Sections 420,465,467,468,477A, 109, 120B IPC and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act,1988, against the petitioner and others was sought to be quashed.

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Paragraphs 6 to 9 of the order dated 10.3. 08 passed in Cr. Misc. No. 4443/08 run like this:

> " Learned Sr. counsel for the petitioner has challenged the order taking cognizance on the ground that no such sanction order could be said to have been obtained against the petitioner for launching prosecution against him. This fact could also be corroborated from the counter affidavit of Dy.S.P. Vigilance, Shri L. B. Ram, dated 18. 2. 2008, in paragraph 14. Learned counsel for the petitioner has also challenged the order impugned on the point of non-procurement of necessary sanction as also on facts, which has been stated in the petition.
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> Learned counsel for the Vigilance Department, in all fairness, has also not disputed so far absence of any sanction order against this petitioner Dr. Jagdish Singh is concerned, but has submitted that after such

sanction is obtained and received in the court below, the learned cognizance taking court shall be at liberty to proceed with the case in accordance with law.

In the facts and circumstances, it is an undisputed fact that impugned order of cognizance could be said to have been passed without obtaining any sanction order against this petitioner, which is barred under Section 19 of the Prevention of Corruption Act.

In the facts and circumstances, all these matters are left for due consideration at the appropriate stage, if and when occasion arises after receipt of such sanction order. For the present, since the impugned order of cognizance is said to have been passed without any sanction order, the same is not sustainable in law so far this petitioner is concerned. So, the impugned order stands quashed so far this petitioner is concerned, with the liberty to both the parties to agitate the matter after receipt of the sanction order in the court below.

In the result, this application stands allowed."

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Learned counsel Shri Kumar by referring Annexure-2 which is a letter bearing No. 1133(9) dated 30.10.2007, addressed to D.I.G., Cabinet (Vigilance) Department, Investigation Bureau, Patna, from Joint Secretary, Health Department, Government of Bihar, enclosing therewith sanction order for prosecution of Dr. Jagdish Singh, the then Civil Surgeon, Muzaffarpur, at present Civil Surgeon, Jamui and Dr. Rajendra Das, the then Addl. Chief Medical Officer, Muzaffarpur, at present District T.B. Officer, Purnea, which was sanctioned vide prosecution sanction order No. 5185, dated 17.9.07. has submitted that letter of the Health Department, Govt. of Bihar, received in the court of Special Judge, Vigilance, Muzaffarpur, which is part of Annexure -2 (Annexure 2/1) clearly shows that such sanction order has been obtained from the appropriate Government

Authority.

Shri Kumar has also referred to Annexure -2/1 which is photo copy of order dated 6.11.2007, so as to show that such sanction orders in respect of prosecution of Dr. Jagdish Singh and Dr. Rajendra Das have been received in the court of Special Judge, (Vigilance), Muzaffarpur. Not only that, the learned counsel has also pointed out this fact is stated in the impugned order dated 2011.07 itself ,so as to show that it has been sanction orders for prosecution of Dr. Jagdish Singh and Rajendra Das have been attached with the case record,

Further contention of Shri Kumar is that in such situation such order should not have been passed in favour of the petitioner Dr. Jagdish Singh in Cr.Misc.No.4443/2008 on 10.3.2008.

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Having considered the submission advanced on behalf of the State of Bihar by Shri Kumar, there appears force and substance in his contention and so the order dated 10.3.2008 passed in Cr. Misc. No 4443 of 2008, requires modification and for that the petitioner Dr. Jagdish Singh, should face trial at the appropriate court at Muzaffarpur, where the said case is still pending against others.

In the result, in last two paragraphs of order dated 10.3.2008, passed in Cr. Misc. No. 4443 of 2008 is recalled and modified to the extent that in place of "the impugned order stands quashed so far this petitioner is concerned, with the liberty to both the parties to agitate the matter after receipt of the sanction order in the court below be read as" the court below is directed to proceed against the petitioner Dr. Jagdish Singh in accordance with law in view of

order dated 20. 11.07, passed in Special Case No. 1 of 2004 in Vigilance P.S. Case No. 4 of 2004.

This application is thus disposed of.

S. K. BOSE. **(Subash Chandra Jha,)**

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